

**FILED**

MAY 12 2022

Mark C. McCartt, Clerk  
U.S. DISTRICT COURT

## UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF OKLAHOMA

1 Donnell Asberry  
Plaintiff(s)

vs.

**22 CV - 214 GKF - CDL**  
Case Number: \_\_\_\_\_2 McIntosh Services  
Defendant(s)

## COMPLAINT - EEOC

Comes now the Plaintiff, Donnell Asberry and for his/her  
claim against the Defendant(s), McIntosh Services  
states and alleges as follows:

1. This action is brought and jurisdiction lies pursuant to 42 U.S.C. §2000e-5. Venue is proper in this District.

2. Plaintiff is a(n) African American male who resides at  
(Race) (Sex)

10740 E 30<sup>th</sup> St. Tulsa, OK 74136  
(Complete address)

3. The Defendant McIntosh Services is an employer,  
employment agency, or labor organization, as defined in 42 U.S.C. §2000e, and is located at

8141 E 48<sup>th</sup> St Tulsa, OK 74145

(Note: 3a-3f to be used if there is more than one defendant.)

3a. The Defendant \_\_\_\_\_ is an employer,  
employment agency, or labor organization, as defined in 42 U.S.C. §2000e, and is located at

3b. The Defendant \_\_\_\_\_ is an employer,  
employment agency, or labor organization, as defined in 42 U.S.C. §2000e, and is located at

3c. The Defendant \_\_\_\_\_ is an employer,  
employment agency, or labor organization, as defined in 42 U.S.C. §2000e, and is located at

3d. The Defendant \_\_\_\_\_ is an employer,  
employment agency, or labor organization, as defined in 42 U.S.C. §2000e, and is located at

*IPD*  
*Drummons*

3e. The Defendant \_\_\_\_\_ is an employer,  
employment agency, or labor organization, as defined in 42 U.S.C. §2000e, and is located at \_\_\_\_\_

3f. The Defendant \_\_\_\_\_ is an employer,  
employment agency, or labor organization, as defined in 42 U.S.C. §2000e, and is located at \_\_\_\_\_

4. On or about 11/01, 2018, defendant(s)  
(Month/day) (Year)

(Specify the unlawful employment practices which you are alleging against the defendant(s), such as: refusal to hire, discharge from employment, harassment in employment, etc.)

discharged plaintiff from employment &  
plaintiff was harassed in employment.  
and retaliation.

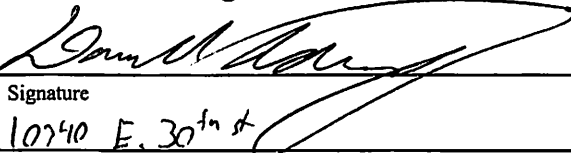
because of (state why defendant(s) discriminated against you, i.e. race, color religion, sex or national origin, etc.)

race.

5. Plaintiff timely filed a written complaint of discrimination with the Equal Employment Opportunity Commission (EEOC) and received a right to sue letter, a copy of which is attached. All conditions precedent to the institution of this lawsuit have been fulfilled.

Wherefore, Plaintiff prays for (state what relief is sought) compensatory &  
punitive damages

and such other relief as the Court would allow under Title VII of the Civil Rights Act of 1964.



Signature

10740 E. 30<sup>th</sup> St

Address

Wlsa

City

918 861-2080

Telephone

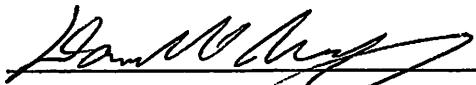
ok

State

74136

ZIP

EEOC Form 5 (11/09)

<b>CHARGE OF DISCRIMINATION</b> This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.		Charge Presented To: Agency(ies) Charge No(s): <div style="display: flex; justify-content: space-between;"> <div> <input type="checkbox"/> FEPA  <input checked="" type="checkbox"/> EEOC         </div> <div>564-2019-01661</div> </div>	
<b>Oklahoma Attorney General's Office, Office of CR Enforcement</b> and EEOC <i>State or local Agency, if any</i>			
Name (indicate Mr., Ms., Mrs.) <b>Donnell A. Asberry</b>		Home Phone (Incl. Area Code) <b>(918) 954-2027</b>	Date of Birth <b>1978</b>
Street Address <b>10740 E 30th St,</b>		City, State and ZIP Code <b>Tulsa, OK 74129</b>	
Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)			
Name <b>MCINTOSH SERVICES, LLC</b>		No. Employees, Members <b>15 - 100</b>	Phone No. (Include Area Code) <b>(918) 270-1414</b>
Street Address <b>8141 E 48th St., Tulsa, OK 74145</b>		City, State and ZIP Code	
Name		No. Employees, Members	Phone No. (Include Area Code)
Street Address		City, State and ZIP Code	
DISCRIMINATION BASED ON (Check appropriate box(es).) <div style="display: flex; flex-wrap: wrap;"> <div style="margin-right: 10px;"><input checked="" type="checkbox"/> RACE</div> <div style="margin-right: 10px;"><input checked="" type="checkbox"/> COLOR</div> <div style="margin-right: 10px;"><input type="checkbox"/> SEX</div> <div style="margin-right: 10px;"><input type="checkbox"/> RELIGION</div> <div style="margin-right: 10px;"><input type="checkbox"/> NATIONAL ORIGIN</div> <div style="margin-right: 10px;"><input checked="" type="checkbox"/> RETALIATION</div> <div style="margin-right: 10px;"><input type="checkbox"/> AGE</div> <div style="margin-right: 10px;"><input type="checkbox"/> DISABILITY</div> <div style="margin-right: 10px;"><input type="checkbox"/> GENETIC INFORMATION</div> <div style="margin-right: 10px;"><input type="checkbox"/> OTHER (Specify)</div> </div>		DATE(S) DISCRIMINATION TOOK PLACE Earliest                      Latest <b>11-01-2018                      11-01-2018</b> <input checked="" type="checkbox"/> CONTINUING ACTION	
THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)): <p>I am a black, male, U.S. Citizen, born in the U.S.</p> <p>In 2018, I began working for McIntosh Services LLC as a member of the Sheet Metal Workers Union. I was also attending Sheet Metal Training School to become a Journeyman. Initially, I was sent to work on a project at St. Francis Hospital. While there, I worked with a man named Manny Asparza (Hispanic). Manny was transferred to the Google job site, where he assumed a managerial role as a foreman/supervisor. I was transferred from the St. Francis site to the Google site in November of 2018. Because of the transfer, Manny Asparza became my direct supervisor.</p> <p>During his time as my supervisor, Manny constantly harassed me with racial slurs. He called me "welfare boy," "Black mother fucker," "Black bitch," and other, similar, objectively racist names. He would also scrutinize my work beyond the level of supervision he gave any other worker. He would stand over me and call me these racist names in saying things like, "You need to work, you Black mother fucker." His racist</p>			
I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures. I declare under penalty of perjury that the above is true and correct.		NOTARY - When necessary for State and Local Agency Requirements I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief. SIGNATURE OF COMPLAINANT  SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (month, day, year)	
<div style="display: flex; justify-content: space-between;"> <div> <b>3/27/20</b>            Date         </div> <div>             Charging Party Signature         </div> </div>			

EEOC Form 5 (11/09)

**CHARGE OF DISCRIMINATION**

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge Presented To: Agency(ies) Charge No(s):

☐ FEPA☒ EEOC**564-2019-01661****Oklahoma Attorney General's Office, Office of CR Enforcement**

and EEOC

*State or local Agency, if any*

comments were so constant and so hateful that I had to complain about them to Les Godwin (White Male). Les Godwin is president of the union and Manny's direct supervisor. Thinking back about it, my complaint should not have been necessary because Les Gowin personally witnessed Asparza's conduct.

To my knowledge, no corrective action was taken because Manny continued with the same hateful conduct. So, just before Thanksgiving, 2018, I went to Les' Supervisor, Jimbo Riece. Riece talked to Asparza and Godwin, who stopped bothering me for the rest of the day, so I thought the harassment would finally stop. However, instead of continuing to harass me, they retaliated against me by terminating my employment for complaining about racial harassment. Because of my termination, I was kicked out of the Union's trade school. My trade school instructor told me I was fired because things were not working out.

I believe I have been discriminated against because of my race and that my termination was retaliation for complaining about racism, both in violation of Title VII of the Civil Rights Act of 1964, as amended.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the above is true and correct.

NOTARY – When necessary for State and Local Agency Requirements

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE  
(month, day, year)

3/27/20

Date

Charging Party Signature

CP Enclosure with EEOC Form 5 (11/09)

**PRIVACY ACT STATEMENT:** Under the Privacy Act of 1974, Pub. Law 93-579, authority to request personal data and its uses are:

1. **FORM NUMBER/TITLE/DATE.** EEOC Form 5, Charge of Discrimination (11/09).
2. **AUTHORITY.** 42 U.S.C. 2000e-5(b), 29 U.S.C. 211, 29 U.S.C. 626, 42 U.S.C. 12117, 42 U.S.C. 2000ff-6.
3. **PRINCIPAL PURPOSES.** The purposes of a charge, taken on this form or otherwise reduced to writing (whether later recorded on this form or not) are, as applicable under the EEOC anti-discrimination statutes (EEOC statutes), to preserve private suit rights under the EEOC statutes, to invoke the EEOC's jurisdiction and, where dual-filing or referral arrangements exist, to begin state or local proceedings.
4. **ROUTINE USES.** This form is used to provide facts that may establish the existence of matters covered by the EEOC statutes (and as applicable, other federal, state or local laws). Information given will be used by staff to guide its mediation and investigation efforts and, as applicable, to determine, conciliate and litigate claims of unlawful discrimination. This form may be presented to or disclosed to other federal, state or local agencies as appropriate or necessary in carrying out EEOC's functions. A copy of this charge will ordinarily be sent to the respondent organization against which the charge is made.
5. **WHETHER DISCLOSURE IS MANDATORY; EFFECT OF NOT GIVING INFORMATION.** Charges must be reduced to writing and should identify the charging and responding parties and the actions or policies complained of. Without a written charge, EEOC will ordinarily not act on the complaint. Charges under Title VII, the ADA or GINA must be sworn to or affirmed (either by using this form or by presenting a notarized statement or unsworn declaration under penalty of perjury); charges under the ADEA should ordinarily be signed. Charges may be clarified or amplified later by amendment. It is not mandatory that this form be used to make a charge.

#### **NOTICE OF RIGHT TO REQUEST SUBSTANTIAL WEIGHT REVIEW**

Charges filed at a state or local Fair Employment Practices Agency (FEPA) that dual-files charges with EEOC will ordinarily be handled first by the FEPA. Some charges filed at EEOC may also be first handled by a FEPA under worksharing agreements. You will be told which agency will handle your charge. When the FEPA is the first to handle the charge, it will notify you of its final resolution of the matter. Then, if you wish EEOC to give Substantial Weight Review to the FEPA's final findings, you must ask us in writing to do so within 15 days of your receipt of its findings. Otherwise, we will ordinarily adopt the FEPA's finding and close our file on the charge.

#### **NOTICE OF NON-RETALIATION REQUIREMENTS**

Please **notify** EEOC or the state or local agency where you filed your charge if **retaliation is taken against you or others** who oppose discrimination or cooperate in any investigation or lawsuit concerning this charge. Under Section 704(a) of Title VII, Section 4(d) of the ADEA, Section 503(a) of the ADA and Section 207(f) of GINA, it is unlawful for an *employer* to discriminate against present or former employees or job applicants, for an *employment agency* to discriminate against anyone, or for a *union* to discriminate against its members or membership applicants, because they have opposed any practice made unlawful by the statutes, or because they have made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the laws. The Equal Pay Act has similar provisions and Section 503(b) of the ADA prohibits coercion, intimidation, threats or interference with anyone for exercising or enjoying, or aiding or encouraging others in their exercise or enjoyment of, rights under the Act.



## U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Oklahoma City Area Office  
215 Dean A McGee Avenue ,Suite 524  
Oklahamom City ,Oklahoma ,73102  
(405) 231-4911  
Website: [www.eeoc.gov](http://www.eeoc.gov)

### **DETERMINATION AND NOTICE OF RIGHTS**

(This Notice replaces EEOC FORMS 161 & 161-A)

Issued On: 02/14/2022

To: Donnell A. Asberry  
10740 E 30th St  
TULSA, OK 74129

Charge No: 564-2019-01661

EEOC Representative and email: Rafael Tirado  
Investigator  
[rafael.tirado@eeoc.gov](mailto:rafael.tirado@eeoc.gov)

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### **DETERMINATION OF CHARGE**

The EEOC issues the following determination: The EEOC will not proceed further with its investigation and makes no determination about whether further investigation would establish violations of the statute. This does not mean the claims have no merit. This determination does not certify that the respondent is in compliance with the statutes. The EEOC makes no finding as to the merits of any other issues that might be construed as having been raised by this charge.

### **NOTICE OF YOUR RIGHT TO SUE**

This is official notice from the EEOC of the dismissal of your charge and of your right to sue. If you choose to file a lawsuit against the respondent(s) on this charge under federal law in federal or state court, **your lawsuit must be filed WITHIN 90 DAYS of your receipt of this notice.** Receipt generally occurs on the date that you (or your representative) view this document. You should keep a record of the date you received this notice. Your right to sue based on this charge will be lost if you do not file a lawsuit in court within 90 days. (The time limit for filing a lawsuit based on a claim under state law may be different.)

If you file a lawsuit based on this charge, please sign-in to the EEOC Public Portal and upload the court complaint to charge 564-2019-01661.



## U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Oklahoma City Area Office  
215 Dean A McGee Avenue ,Suite 524  
Oklahamom City ,Oklahoma ,73102  
(405) 231-4911  
Website: [www.eeoc.gov](http://www.eeoc.gov)

On Behalf of the Commission:

Digitally Signed By:David Davis  
02/14/2022

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David Davis  
Acting District Director

**Cc:**

Janet Cook  
Human Resources Director  
MCINTOSH SERVICES  
[cook.janet@McIntoshOK.com](mailto:cook.janet@McIntoshOK.com)  
Rebecca D. Bullard  
Attorney  
Doerner, Saunders, Daniel & Anderson  
[rbullard@dsda.com](mailto:rbullard@dsda.com)

Howard Berkson  
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Donald Slaughter  
AttorneyBOSTON AVENUE LAW, PLLC  
[donald@bostonavenuelaw.com](mailto:donald@bostonavenuelaw.com)

Please retain this notice for your records.



Enclosure with EEOC Notice of Closure and Rights (Release Date)

**INFORMATION RELATED TO FILING SUIT  
UNDER THE LAWS ENFORCED BY THE EEOC**

*(This information relates to filing suit in Federal or State court under Federal law. If you also plan to sue claiming violations of State law, please be aware that time limits may be shorter and other provisions of State law may be different than those described below.)*

**IMPORTANT TIME LIMITS – 90 DAYS TO FILE A LAWSUIT**

If you choose to file a lawsuit against the respondent(s) named in the charge of discrimination, you must file a complaint in court **within 90 days of the date you receive this Notice**. Receipt generally means the date when you (or your representative) opened this email or mail. You should **keep a record of the date you received this notice**. Once this 90-day period has passed, your right to sue based on the charge referred to in this Notice will be lost. If you intend to consult an attorney, you should do so promptly. Give your attorney a copy of this Notice, and the record of your receiving it (email or envelope).

Your lawsuit may be filed in U.S. District Court or a State court of competent jurisdiction. Whether you file in Federal or State court is a matter for you to decide after talking to your attorney. You must file a "complaint" that contains a short statement of the facts of your case which shows that you are entitled to relief. Filing this Notice is not enough. For more information about filing a lawsuit, go to <https://www.eeoc.gov/employees/lawsuit.cfm>.

**ATTORNEY REPRESENTATION**

For information about locating an attorney to represent you, go to:  
<https://www.eeoc.gov/employees/lawsuit.cfm>.

In very limited circumstances, a U.S. District Court may appoint an attorney to represent individuals who demonstrate that they are financially unable to afford an attorney.

**HOW TO REQUEST YOUR CHARGE FILE AND 90-DAY TIME LIMIT FOR REQUESTS**

There are two ways to request a charge file: 1) a FOIA Request or 2) a Section 83 request. You may request your charge file under either or both procedures. EEOC can generally respond to Section 83 requests more promptly than FOIA requests.



Enclosure with EEOC Notice of Closure and Rights (Release Date)

Since a lawsuit must be filed within 90 days of this notice, please submit your request for the charge file promptly to allow sufficient time for EEOC to respond and for your review. Submit a signed written request stating it is a "FOIA Request" or a "Section 83 Request" for Charge Number 564-2019-01661 to the District Director at David Davis, 1222 Spruce St Rm 8 100 St Louis, MO 63103. You can also make a FOIA request online at <https://eeoc.arkcase.com/foia/portal/login>.

You may request the charge file up to 90 days after receiving this Notice of Right to Sue. After the 90 days have passed, you may request the charge file only if you have filed a lawsuit in court and provide a copy of the court complaint to EEOC.

For more information on submitting FOIA Requests and Section 83 Requests, go to: <https://www.eeoc.gov/eeoc/foia/index.cfm>.

Enclosure with EEOC Notice of Closure and Rights (Release Date)